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ABSTRACT

The contents of this document consist of a transcript of the 1975 Censorship Conference proceedings, a list of conference participants, an outline of the National Ad Hoc Committee against Censorship, a statement of concern, and three appendixes. Contents of the transcript include introductory remarks by William F. Pore; a welcoming address by Dave Randolph, pastor of the church in which the meeting was held; "Censoring 'Obscenity'" presented by Franklin S. Haiman; "Textbook Censorship," a role play of an open school board meeting presented by representatives of the American Library Association; a reading by Melvin Douglas from "Inherit the Wind" to commemorate the fiftieth anniversary of the Scopes trial; "Government Secrecy--Two Views and a Question Period" presented by Morton H. Halperin and Frank N. Trager; and closing remarks by William F. Pore. (JM)

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PROCEEDINGS OF THE December 9, 1975 CENSORSHIP CONFERENCE

Christ Church, United Methodist
New York City

A day long discussion of three threats to
the First Amendment and how organizations can respond

National Ad Hoc Committee Against Censorship

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PROCEEDINGS OF THE DECEMBER 9, 1975 CENSORSHIP CONFERENCE

OF THE NATIONAL AD HOC COMMITTEE AGAINST CENSORSHIP

Christ Church, United Methodist
New York City

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A transcript of the Conference proceedings is published here with minor editing. The exceptions:

1. Following the address by Professor Haiman, and the addresses by Dr. Halperin and Professor Trager, the conference broke into small groups of about ten persons for informal discussion; these were not recorded.

2. The material on textbook censorship is not a transcription of the conference proceedings but background material for role play sessions.

3. Melvyn Douglas's reminiscences about his appearance in INHERIT THE WIND, in the role based on Clarence Darrow, are omitted.

4. Professor Trager's address has been summarized at his request.

INTRODUCTORY REMARKS

WILLIAM F. FORE

I think it fair, though perhaps grandiose, to say we have come here to discuss freedom, and particularly First Amendment rights. About three years ago we got together to see whether there was value in a number of organizations relating to this problem and trying to educate people with whom we deal daily--in churches, in library associations, in synagogues, and so on. We decided it was a profitable thing to do, and we've been meeting about three times a year ever since. We finally were able to scratch together modest funds which have enabled us to retain a part-time staff person who does this because she is committed to it and is willing to work for us for part-time pay and do practically full-time work. Her name is Leanne Katz. . . .

This little pamphlet indicates what we are for, and by implication what we are against. We were concerned about some of the Supreme Court rulings that were coming out . . . [in 1973 and 1974] particularly. Some of us, as we say in our Statement of Concern, reject all barriers restricting or abridging access to any material, however offensive or controversial or abhorrent it might be. Others of us in this organization reject barriers for adults so long as their individual rights of choice are not infringed--which is quite a different position. So there is a great deal of diversity. I'd say we are all united in a conviction that censorship of what we see and hear and read constitutes an unacceptable dictatorship over our minds and a dangerous opening to religious and political and artistic and intellectual oppression. So that's who we are.

We decided we ought to have a conference on censorship. One of my friends came in this morning, and asked the lady upstairs, "Where's the anti-censorship conference?" She said, "Anti-censorship! I thought it was censorship." Well, in a way it's both; we just want to look at the issues, okay? We're not proposing that this group take any positions, that it represent your organizations, that you all get your organizations in the paper and in trouble for supporting something, you know. It's just a conference to explore issues. And if your organization is interested in relating and isn't already related, you can come along and support the Statement of Concern officially. . . . So much for who we are.

I'd like now to introduce Dr. David Randolph who is the pastor of this church.

William F. Fore is assistant general secretary for Communication of the National Council of Churches of Christ. He was the convenor of the National Ad Hoc Committee Against Censorship and presides over its meetings.

Christ Church United Methodist has a very long and distinguished history. Some of you may remember Dr. Ralph Sachman; he was followed by Dr. Harold Bosley, and now, just in the last year, I guess, David has come to this church. He also happens to be a friend of mine, one of the really important leaders in the United Methodist Church, and he would like to greet us.

WELCOME FROM DAVID RANDOLPH

PASTOR OF CHRIST CHURCH, UNITED METHODIST

It is a pleasure to welcome the Censorship Conference here to Christ Church. I believe this will be a historic conference and we are glad you are here. It's a good sign that Bill Fore is presiding. He is a very able man--one of the few I know who is an expert both on new movements and old movies, so you should have a good time. We hope that while you're here you'll get a chance to feel at home, sense something of the vibrations of freedom which we hope have been generated here, and perhaps before you leave you might go upstairs to the nave and have some time to look at the lovely Romanesque and Byzantine sanctuary in which we worship; we hope that you will find something of the message of the season there.

The concern for the rights of expression and the public's right to know are fundamental. I've been wondering in this season whether, if the angels which came to Shepherd's Field in Bethlehem some 2000 years ago were to arrive on the mall in Washington or in Central Park today, there would be some who would find the angels' garb obscene, their message subversive.

But they got the message through. The message must always get through, which I take it is the concern of this group. We're glad that you're working in this crucial area, and we're glad that you're working here.

CENSORING "OBSCENITY": ADDRESS BY FRANKLYN S. HAIMAN

I had some difficulty trying to decide what would be most useful to say here because so many of you are deeply involved on a day-to-day basis with the issues related to obscenity and are well informed about many of the things that have been happening in recent years. I finally decided that perhaps the most helpful thing would be to try and put all these isolated events in some kind of historical perspective and relationship to other free speech issues. I'd like to take a little time to do a quick reminder of where we've come from historically on this obscenity issue and its relationship to other First Amendment questions, bring us up to the most recent development in the area of obscenity and related issues, and then conclude with a few comments about where we might be going in the future.

The most obvious starting place is, of course, the adoption of the First Amendment of the Constitution with the phrase "the Congress shall make no law abridging freedom of speech." It's interesting to observe in that connection that there was no exception contemplated or discussed at that time for so-called "obscene" material. Historical scholars have quite properly noted that when the founding fathers said Congress shall make no law abridging free speech, or no law interfering with religious freedom or establishing religious institutions, that they really didn't mean all that. They have pointed to the fact that at the very same time that the founding fathers were stating these absolute things in the federal constitution, many states had laws against libel and a long history of prosecution for libelous statements, and that states also had established churches--the conclusion being that they must have meant only for the First Amendment to apply to the federal government. And when they said no law abridging free speech, the speech they were apparently talking about was the speech that was at that time free, and they didn't mean to include libel under that general rubric. But obscenity was another matter.

There was no exception for obscenity in existence at that time. Indeed, it was not until several decades later--in 1821--that the first law in this country was adopted against obscenity; the first prosecution for the distribution or selling of obscene material also occurred at about that time. It wasn't until much later in the 19th century, in the 1860s and the 1870s, when the first federal

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obscenity legislation was adopted. In the first instance the customs office was given authority to prevent the importation of so-called "obscene photographs," and later "obscene literature." And then came the famous Comstock Act, which made it illegal to send so-called "obscene material" through the United States mail. I think it is the only piece of legislation in our history which is named after its lobbyist rather than after one of the Congressmen who supported it, which gives you some indication of the power that Comstock and his Society for the Suppression of Vice had at that time. It was also adopted, I believe, after only about an hour of debate in both houses of Congress.

Despite the adoption of the Comstock law, and the activity of the censorious minded during that period, there still wasn't a lot of prosecutorial activity, particularly at the federal level. There was somewhat more activity at the state level--Walt Whitman's LEAVES OF GRASS, for example, which a publisher hesitated to publish because of threatened prosecution. But it was not a highly active area, even though these laws were on the books.

The next really important point in time to note is 1933, when the United States Customs Office, attempting to exercise the authority that had been given to it by Congress, sought to prohibit the entry into this country of James Joyce's book, ULYSSES. And you recall that that case evoked a famous opinion from a federal district court judge here in New York, finding that the book ULYSSES was not obscene. That marked the beginning of a whole series of cases, most of which went in the direction of finding one piece of material after another not to be obscene, and carefully narrowing the exception that had been carved out of the First Amendment for material that supposedly appeals to the prurient interest in sex. There were whole series of cases in which courts found against the censor, involving books by James Farrell and others. Once in a while decisions went the other way--as in the case of Edmund Wilson's book MEMOIRS OF HECATE COUNTY, in which the book was found obscene in New York. The Supreme Court split four to four, with Justice Frankfurter feeling that he had to abstain because of his personal friendship with the author of that book.

But on the whole the direction was toward more liberality. In 1952, for the first time, the Supreme Court said explicitly that movies are protected by the First Amendment. Before this, they had not been so regarded. As a result of that major decision in 1952 involving the film, THE MIRACLE, there were a whole series of cases in which one act of movie censorship after another was struck down by the Supreme Court--the film of the book, LADY CHATTERLEY'S LOVER, the French movie, THE LOVERS, and so on down the line.

In 1957 the next major event, which I assume you are all familiar with, the famous Roth case, occurred, in which the Supreme Court made explicit for the first time what had already been pretty well accepted, and that is that so-called "obscene speech" is not protected by the First Amendment. Roth was found guilty of mailing obscene material. One might think at first blush that this was a turning back. Actually, I think it was just another step in the movement forward, because although the court was here saying explicitly for the first time that obscene material isn't protected by the First Amendment, the definition which was given to obscenity was a narrow one, limiting it to material which taken as a whole appeals to the prurient interest of the average person as judged by contemporary community standards.

It soon became apparent that the Supreme Court intended to interpret that definition very narrowly. What happened after 1957, as you all know, was a steady stream of cases in which one thing after another was found not to be obscene by the United States Supreme Court. First there were cases involving homosexual magazines, then there were nudist magazines, and then there was Henry Miller's book THE TROPIC OF CANCER, and John Cleland's book MEMOIRS OF A WOMAN OF PLEASURE, more popularly known as FANNY HILL. One after another the Supreme Court found, under the Roth test, that these materials were not obscene. And although it never became the view of a majority of the Court, Justice Brennan, who wrote most of these opinions and became the Supreme Court resident expert on obscene material, took the position that material could not be found obscene unless it was, in his words, "utterly without redeeming social importance." And that view was certainly the general tendency. The one big exception, of course, was in 1966, when Ralph Ginzburg was sent to jail for having mailed erotic advertising. But even there the Court conceded that the material itself that Ginzburg wanted to sell was not obscene. It was the manner of advertising, so-called "pandering," which landed Ginzburg in jail, not the material itself.

Well, this increasing permissiveness, if you want to call it that, on the part of the Supreme Court, was part of the motivation for the billboards in Texas that said "Impeach Earl Warren"--although I think more of that was due to Warren's positions on the rights of criminal defendants (actually Warren wasn't that libertarian on obscenity issues). Nevertheless, public unrest began to grow. Groups like Citizens for Decent Literature became very active in many places around the country, and tremendous pressure began to be felt by members of Congress to "do something" about the so-called "flood of smut" that was inundating the country, and particularly the mails.

In 1967--it seems like a long time, but it isn't all that long ago--the United States Congress took two very important steps in this area. One was to pass a piece of legislation that allowed the recipients of sexually oriented material which they found offensive to tell the post office to tell the mailer of that material not to send any more mail, of any kind, to that recipient. About half a million people took advantage of this legislation and informed the post office to tell these mailers to stop mailings to them. The law was challenged and the Supreme Court, in 1970, unanimously upheld that law, with Chief Justice Burger writing a strong opinion about the right of people to be left alone in their homes, and not to have to be exposed to material that they don't want. Encouraged by that decision, Congress went one step further with the so-called "Goldwater Amendment" to the Postal Reorganization Bill of 1970, named after Senator Barry Goldwater, under which people can now put their names on a list at the post office, and any mailer of sexually oriented advertising is obliged to buy this list and screen these names off of his mailing.

The other important thing that happened in 1967 in Congress was the establishment of the National Commission on Obscenity and Pornography. It's interesting, I think, that the primary motivation behind that legislation was to try to do something about what was perceived as the problem of obscenity. The hope was that this commission would come out with recommendations for the control of the so-called "flood of smut." Well, the commission was appointed by President Lyndon Johnson, and it consisted of outstanding authorities, a wide spectrum of people from all over the country in a variety of fields. The chairman of the commission was the former dean of the University of Minnesota Law School, who had written the major law review article on obscenity, William Lockhart. There were sociologists, psychiatrists, all the way over to representatives of Citizens for Decent Literature, Morality in Media, and so on. Much to the surprise, and in some cases the horror, of the sponsors of the creation of the commission, three years later in 1970, as you recall, that commission came forth with the finding that, after extensive review of all the research that had been done and further research that had been commissioned by this body, they could not find any evidence of a causal relationship between erotic material and antisocial behavior. In view of this conclusion, the majority of the commission recommended that all obscenity legislation, federal and state, should be abolished in so far as consenting adults are concerned. The only exceptions recommended were legislation dealing solely with juveniles, and also with the issue of so-called "public thrusting" of erotic material on unwilling

audiences. With those two exceptions, the commission felt that restrictions on obscenity had seen their day and should go.

The Congress was not very happy with that. That great champion of freedom, Senator McClellan, introduced a resolution in the United States Senate condemning the findings of this commission; and, not being able to vote against God and motherhood, 60 members of the United States Senate voted for Senator McClellan's resolution and only five brave souls voted against it. Our then President Richard Nixon, that great expert on morality and ethics, kept silent for about four or five weeks and then had this to say about the commission's recommendations: "American morality is not to be trifled with. I categorically reject its bankrupt conclusions. So long as I am in the White House there will be no relaxation of the national effort to control and eliminate smut from our national life." (The tapes, of course, were not available at that time--with or without their expletives deleted.)

Unfortunately, Mr. Nixon had an opportunity to do something about his views when four seats fell vacant on the United States Supreme Court in very short order. A result of that, as we all know, was that Mr. Nixon's four appointees joined by Justice Byron (Whizzer) White rewrote the law of obscenity in 1973, with a series of decisions which attempted to turn the clock back. The Roth test was rewritten in several important ways, although much of it was retained. The main thing that was retained was a reaffirmation of the principle that obscenity is limited strictly to sexually oriented material. That still remains the law of the land, although the Chief Justice has some doubts about it (and I want to come back to that in a few moments). But the majority of the Court has reasserted in these 1973 decisions that we're talking only about sexually oriented material when we're talking about obscenity.

The points at which the Court deviated from the Roth decision are significant. In the first place, whereas Roth, as elaborated by Justice Brennan in the years that followed, had made it virtually impossible for prosecutors to successfully obtain convictions on anything but the hardest core of hard-core pornography, the Supreme Court now said that only material of "serious" artistic, literary, political or scientific value was protected by the First Amendment. Non-serious material (whatever that may be and to be determined presumably at trial), is no longer protected by the First Amendment. The second important feature was that, although there was some doubt as to what had been meant in Roth by "contemporary community standards" (was it the national community or the local community?), the majority of the Supreme Court now made clear that it was the local community which makes

the decision as to what it is that appeals to prurient interests and what is patently offensive. Finally, hidden in all the rhetoric and perhaps not receiving as much attention in the commentaries on the opinion as it should have received, was Chief Justice Burger's response to the Commission on Obscenity and Pornography's rationale that since there was no ascertainable connection between erotic material and antisocial behavior, the state had no business regulating it. The Chief Justice's answer to that (and I don't know if this had ever been previously so clearly expressed in a Supreme Court decision) was that it doesn't matter if there is any connection between obscene material and antisocial behavior; that the state is not limited to the control of behavior that has antisocial consequences; that morality is a proper concern of the law. If Congress or a state legislature, in their wisdom, feel that obscene material is simply detrimental to people's value systems and sense of morality, that is sufficient basis for them to legislate against it. This was a far reaching view that has significance, I think, well beyond the area of obscenity.

Perhaps even more significant in the long run (at least I hope more significant), was the dissenting opinion of Justice Brennan who, after all these years of writing majority opinions for the Court and holding to the view that there is an exception to the First Amendment for obscenity, now felt that, on the basis of these years of experience, it had been a futile effort. He now, along with three other dissenting justices, agreed that the position of the Commission on Obscenity and Pornography was the proper one; that all laws with respect to consenting adults should be declared unconstitutional. He, like the commission, felt that there should still be an exception for unwilling audiences having offensive material thrust upon them, and he was also willing to accept legislation with regard to juveniles. I would hope that some day in the not-too-distant future this view will become the prevailing one. There seems to me to be a certain inevitability about that. Mr. Nixon's four appointees and Justice White cannot live forever, and I would think that new appointees might take a somewhat different view.

Meanwhile, we live with the confusion and ambivalence that the 1973 decisions created. I think that most of you who are working in the field are familiar with the uncertainties and confusions that have existed for the last two years. You'll remember the finding by the Georgia Supreme Court that, since the U.S. Supreme Court had now said that local standards are to prevail, the Georgia Supreme Court felt that the decision of an Albany, Georgia, jury that the movie CARNAL KNOWLEDGE was obscene should be affirmed. But when that case got to the U.S. Supreme Court

they said, "Oh, no." Even Justice Rehnquist, who wrote the opinion in this case, said that they didn't mean all that and were not going to allow juries to go so far as to declare an innocuous movie like CARNAL KNOWLEDGE to be obscene. So they had to reverse that decision and say that although they meant that local community standards are to apply, there is still an obligation of the higher courts to review those decisions if they get too far out of hand.

The road show of HAIR, denied the opportunity to rent a municipal auditorium in Chattanooga, Tennessee, challenged that denial in court. The Supreme Court struck down the decision though doing so on procedural grounds without addressing the question of whether or not HAIR itself, as a play, was obscene. Nevertheless it was indicated that even this new Supreme Court was going to be fairly strict about the kinds of restrictions it would allow under the guise of obscenity actions.

Not at the Supreme Court level, but in many other courts around the country, the movie DEEP THROAT has been litigated again and again, with various curious results. In Chicago, for example, it was finally found obscene, whereas in some of the rural small towns in the area it is playing uninhibited. Here in New York City, this den of iniquity, a local judge found, as he put it so nicely, that "this was one throat that deserved to be cut," and found the movie to be obscene. (I understand it is now showing again in an edited form.)

An enterprising publisher by the name of Hamling in California decided it might be neat to produce an illustrated version of the National Commission on Obscenity and Pornography report, and the Supreme Court has now said that he goes to jail for having advertised its sale through the mails. In the state of New York, the highest court of the state has said that "local community standards" mean state-wide standards. In Virginia, on the other hand, the highest court has said that "community standards" mean <u>local</u> community standards. The U.S. Supreme Court has indicated that both are acceptable. So if New York wants to make it state standards that's okay, and if Virginia wants to make it local community standards that's okay too.

Perhaps of even greater significance--and here I come back to an allusion I made earlier--was Chief Justice Burger's footnote in the <u>Miller</u> case in 1973 in which he suggested that, although he felt obliged, because of his strict constructionist view of going along with precedent, to live with the notion that obscenity is legally confined to erotic material, he says that if you look at the etymology of the word "obscene" the Latin root had to do with something called "filth," which goes far beyond sexual material. This is really what is obscene,

according to the Chief Justice, and perhaps what ought to be dealt with by the legal system. A similar view is held by some of the more sophisticated recent writers in this area. One is a man by the name of Harry Clor, who has written a very intelligent book (although I disagree with it thoroughly), on OBSCENITY AND THE PUBLIC MORALITY. Irving Kristol is another man who has done a lot of writing in this area, and who argues that the notion of obscenity should be extended beyond just sexually oriented material to anything that brutalizes, de-humanizes, makes people into animals. By their definition the famous scene in TOM JONES (I don't know how many of you saw that movie) when the couple is gnawing on some chicken legs and the camera zooms in on them showing the details of their eating--that would be obscene by these definitions, because it shows people as animals. There is a passage in CATCH-22 describing a wounded soldier whose guts are spilling out as he sits below a tree--that would be obscene by this definition because it describes humanity in base, animal, physical terms. And, although, as I said, he is not willing to write it into law yet, Chief Justice Burger apparently shares that view of what ought to be obscene.

Well, with this state of uncertainty about obscenity law, and with the difficulties even under the new 1973 decision for prosecutors to get convictions for obscenity, we've seen in the last four or five years a new and important development in which local law enforcement officials are attempting to get at material they can't get at under the obscenity law through what are called public nuisance or public indecency laws, and even sometimes through state liquor control commissions. In California, the Department of Alcoholic Beverage Control decided that anybody who held a liquor license would be prohibited from having topless dancing in their bars. The same thing has happened here in New York. You may have read in the New York papers the last couple of days that the Village Gate is now under the gun for the show LET MY PEOPLE COME, because the Liquor Authority here is saying that they don't want sexually explicit material at places where alcohol is sold.

The U.S. Supreme Court has gone two ways on this. With regard to the California case, California v. LaRue in 1971, the Court said that the 21st Amendment, which repealed prohibition, gives to the states plenary authority for the control of alcohol. If a state wants to say that you can't have nude dancing along with the sale of alcohol--that's okay and it doesn't violate the First Amendment. However, here in New York, in Doran v. Salem Inn, the Supreme Court has just said that the law prohibiting topless dancing was too broad because it went beyond bars and nightclubs and extended to places where there might be theatrical performances.

Under the law a nude ballet might be prohibited, and so the Supreme Court struck that down.

You might remember the last March 1st issue of NEWSWEEK magazine, with a cover picture of a Vietnamese mother carrying a mutilated child in her arms. The dead and naked body of her child showed enough of the genital area for Dallas, Texas, authorities to decide that those pictures had to be taped over. And so pieces of tape were put on the cover of NEWSWEEK magazine that was sold that week on the newsstands in Dallas.

In Jacksonville, Florida, a public indecency law was used to close down a drive-in movie theater whose screen could be seen from a public street, because it was showing films which had bare breasts and buttocks, and that was prohibited by the law.

Finally, in a case which I feel has received far too little attention although I hope eventually it will receive more, this past spring the Federal Communications Commission issued a tough order in which station WBAI-FM here in New York was seriously threatened with license revocation if it ever again allowed a program such as that of George Carlin using four-letter words on the radio--words which are admitted by the FCC not to be obscene by any legal definition of the term, but are "indecent." Since the federal law prohibits not only "obscenity," but also "indecency," in the broadcasting media, the FCC is now flexing its muscles in attempting to get rid of "indecency" on the air.

Well, as I have suggested, court reaction is beginning to come in already, although the final chapter is yet to be written, on these public nuisance, public indecency, and liquor control laws. I've already told you about the California and New York cases with regard to topless dancing in bars. The Jacksonville, Florida, case is an important one because in this case Justices Powell and Blackmun defected from the Nixon bloc and joined the dissenters from the 1973 decision, ruling (with Justice Powell writing the opinion himself) that you cannot prohibit sex and nudity from public places. If people don't like it, they can just turn their eyes away. That case, Erznoznik v. Jacksonville, may be an important indicator of things to come. It stands somewhat in contrast, I think, to the 1970 decision about the unwanted mailing of sexually oriented material. It will be interesting to see, as time goes on, which of those views is going to prevail. The whole notion that the thrusting of offensive material, even though it's not legally obscene, on unwilling, unconsenting auditors is something preventable, something the state has a right to make illegal, is a very tempting notion; because we're very big in this country,

and I think rightly so, on rights of privacy, rights to be let alone. The language of the Rowan decision finding unanimously in favor of the prohibition against the mailing of explicit material to those who don't want it talks in strong terms about the right to be let alone. Even the ACLU National Board, I must confess, was taken in by that rationale several years ago when it revised its policy on obscenity and went along with the exception for "public thrusting." It was only with considerable effort that some of us got the Board to change that view, asking why we are so concerned with protecting people against offensive sexually oriented material when we don't do the same thing with regard to anything else. I found Richard Nixon on TV as offensive as any sexual thing I can possibly imagine, yet no one said I should be protected from having to see him. I imagine a Jehovah's Witness finds the flying of the American flag to be deeply offensive to his values, and yet we don't have laws saying you have to abolish that sort of thing from the public forum. I think the argument that finally persuaded the ACLU National Board was when one of the members said, "What about a sign, a billboard, on the right side of which you have a picture of a couple locked in sexual embrace, and on the other side of which you have a gory scene of war violence, and then you have a label over the two that says 'Make Love, Not War.' Is that sexual material that can be prohibited under a public indecency law, or is that political material that is protected under the First Amendment?"

I think therein lies the fallacy in the notion that somehow we can separate out sexually oriented material as something of lesser value, something worthless, something we shouldn't exercise ourselves about with regard to First Amendment protection. At one time, in 1948, the U.S. Supreme Court, in a wise moment which unfortunately has since been forgotten, ruled in a case from New York, Winters v. New York, that a particular publication was not obscene, and said: "The line between the informing and the entertaining is too elusive for the protection of that basic (First Amendment) right. Everyone is familiar with instances of propaganda through fiction. What is one man's amusement teaches another doctrine." And I guess the artist who perhaps knows more about that than anyone else said it even better. George Bernard Shaw once wrote the following: "I am a specialist in immoral and heretical plays. . . . I regard much current morality as to economic and sexual relations as disastrously wrong. . . . I write plays with the deliberate object of converting the nation to my opinions in these matters. . . . It is no more possible for me to do my work honestly as a playwright without giving pain than it is for a dentist. The nation's morals are like its teeth--the more decayed

they are the more it hurts to touch them. Prevent dentists and dramatists from giving pain, and not only will our morals become as carious as our teeth, but tooth-ache and the plagues that follow neglected morality will presently cause more agony than all the dentists and dramatists at their worst have caused since the world began."

I think there is an essential truth in Shaw's words and in the Winters' notion that the line between informing and entertaining, between politics and sex, is too fine a line to draw. Some day this reality simply has to be recognized. I believe that reality eventually has a way of forcing itself into people's consciousness, even those of Supreme Court Justices. So someday I would predict we will get rid of the obscenity exception to the First Amendment. But I would only be kidding you if I suggested that it isn't going to be a long way off and that there isn't a great deal of education that is going to have to go on in the meanwhile to reach that point.

TEXTBOOK CENSORSHIP: ROLE PLAY OF OPEN SCHOOL BOARD MEETING

The second morning session of the Conference was devoted to the presentation of a role play, developed and presented by representatives of the American Library Association, depicting extralegal pressures on library and curricular materials in schools.

A role play presents an imaginary life situation in which people act and react in terms of the characters they play. It requires a temporary stepping out of one's identity and assuming the identity of another individual. A role play does not have a script or a pat solution. Rather, it is open-ended. The solution is the logical conclusion of the role players' reactions to the situation. Its purpose is not to find the ultimate solution to a given problem, but to present information regarding conflicting ideas in a problematic life situation.

The role play presented at the Censorship Conference centered around the objection of Mr. Comstock, the father of a student, to what he considered the "filthy and objectionable" language of GO ASK ALICE, as well as the book's inclusion in a ninth-grade health education reading list. Mr. Comstock presented his complaint to Ms. Miles and Mr. Nelson, the librarian and teacher involved, and completed an official request for review form. Completion of the form constituted the initial step in the established review procedure of the school system. The complaint was presented to a review committee made up of teachers from several departments, a representative of the PTA, a representative of the student council and the librarian, an ex-officio member. The committee was asked to report its findings and recommendations at the next school board meeting.

During the period of review by the committee, Mr. Comstock brought his objections before a community group of concerned parents. The group had originally been organized to combat a sex education program in the school system, but had remained organized, though inactive, following the resolution of that conflict.

The presentation of the role play at the Censorship Conference began with the report of the review committee to the school board before a capacity audience made up of teachers, students, citizens supporting the use of GO ASK ALICE, and Mr. Comstock's supporters. Conference participants made up the audience and were assigned the roles described above.

Other role players included Mr. Comstock, the librarian and teacher directly involved, and the five-member school board. The members of the school board represented a broad spectrum of personalities, professions and philosophies. They were (see Appendix I for more complete descriptions):

SUZANNE HAMES (chairperson): lawyer, libertarian, overly "fair."

LENORE STUART: wife, mother, active in community work, elected to board because of her opposition to sex education.

PHYLLIS LANDRY: former teacher, small business owner, tends to take a middle of the road position.

MICHAEL TOWNE: owner of town's largest business, conservative and proud of it.

JAMES A. FIELD: manager of family dairy business, elected to board for opposition to sex education, having second thoughts.

At the Board meeting, the review committee reported (see Appendix II) that it endorsed the book for use in the media center of the junior high school. In arriving at its decision, the committee consulted reviews of GO ASK ALICE in professional and general literature and consulted the book selection policy of the school system.

Following the committee report, Ms. Hames opened discussion on acceptance or rejection of the report to the board members. Responding to questions by board members, the teacher and librarian reiterated their support of the book; Mr. Nelson because of its realistic anti-drug message in contemporary language, Ms. Miles because the books in the library are not required reading and therefore should not be censored due to a single complaint. Ms. Miles went on to explain that the library's role is to support the curriculum and broaden students' awareness by providing information on a variety of subjects. According to Ms. Miles, Mr. Comstock had every right to restrict the reading of his own children, but not the reading of other children in the community.

The board continued its discussion of the merits of the book and of the purpose of education. Mrs. Stuart concentrated on what she regarded as obscene language in the book (see Appendix III for excerpts of "objectionable" portions of book) and her own crusade against such extraneous topics as sex education and drug education in schools. Mr. Towne supported her views and denied that a need exists for such a book as GO ASK ALICE. He went on to say that he did not believe there were drug problems in their own community. Mr. Nelson answered both comments by describing the high rate of illegitimate births in the community and quoting statistics from the chief of police which showed a very high rate of drug abuse among high school students. He also described two recent deaths due to drug overdoses.

Mr. Field obtained the floor and stated that, while he was very concerned

about what children read, he felt that the issue was not this particular book but the right to read. He expressed the view that it is his personal right to guide and restrict his own children's reading, but he did not want any one else telling him or his children what they could or could not read. He also said that the purpose of education is to prepare children to go into the world. Without knowledge of what problems exist in the world and without the ability to make decisions on their own, the children of the community would not be adequately educated. Mr. Field went on to say that books such as GO ASK ALICE present students with the experiences of their peers and provide students with the background knowledge necessary to make informed decisions.

Members of the board requested the chairperson open discussion to all in attendance at the school board meeting in order to give the board a sense of the community's feelings regarding the issue. Among the first to speak was a representative of the concerned parents committee who read a prepared statement decrying the public school system. He said, "The schools do not have to be relevant if what lies in the street and in society in general is irreverent; and, is irrelevant to wholesome living, fixed standards and traditional American ideals. . . Perhaps some hypocrisy in a society that can recognize right from wrong is far preferable to open-ended anarchy and/or Godless or authoritarian socialism." Teachers in the audience asked how anyone could recognize right from wrong without being presented a variety of materials and options. Students presented with a singular view of the world were not sufficiently prepared to deal with opposing views. Mrs. Stuart responded by saying that children would learn right from wrong at their mother's knees, that it was up to the parents to teach them right from wrong and up to the school system to reinforce the parents' teachings.

After continued discussion of the pros and cons of GO ASK ALICE, Chairperson Hames closed discussion and called for a vote of the school board. The vote was tied with one abstention. According to the rules of the school board, a tie designates acceptance of the motion and GO ASK ALICE was retained in the media center.

READING BY MELVYN DOUGLAS FROM INHERIT THE WIND, SCRIPT BY JEROME LAWRENCE AND ROBERT E. LEE, TO COMMEMORATE THE 50TH ANNIVERSARY OF THE SCOPES TRIAL

It is possible that something *is* holy to the celebrated agnostic?

Yes! The individual human mind. In a child's power to master the multiplication table there is more sanctity than in all your shouted "Amens!" "Holy, Holies" and "Hosannahs!" An idea is a greater monument than a cathedral. And the advance of man's knowledge is more of a miracle than any sticks turned to snakes, or the parting of waters! But are we now to halt the march of progress because Mr. Brady frightens us with a fable? Gentlemen, progress has never been a bargain. You've got to pay for it. Sometimes I think there's a man behind a counter who says, "All right, you can have a telephone; but you'll have to give up privacy, the charm of distance. Madam, you may vote; but at a price; you lose the right to retreat behind a powder puff or a petticoat. Mister, you may conquer the air; but the birds will lose their wonder, and the clouds will smell of gasoline!" Darwin moved us forward to a hilltop, where we could look back and see the way from which we came. But for this view, this insight, this knowledge, we must abandon our faith in the pleasant poetry of Genesis.

Then why did God plague us with the power to think? Mr. Brady, why do you deny the *one* faculty which lifts man above all other creatures on the earth: the power of his brain to reason. What other merit have we? The elephant is larger, the horse is stronger and swifter, the butterfly more beautiful, the mosquito more prolific, even the simple sponge is more durable! . . . This man wishes to be accorded the same privilege as a sponge! *He wishes to think!*

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GOVERNMENT SECRECY--TWO VIEWS AND A QUESTION PERIOD

ADDRESS BY MORTON H. HALPERIN

Thank you very much. I should, I guess, expect a Yalie to leave out the fact that I went to Columbia College, but I want to be sure that got on the record. I also should say that that vita is one-job old. I am no longer with the Twentieth Century Fund; I am now directing the Project on National Security and Civil Liberties sponsored by the ACLU Foundation and the Center for National Security Studies.

I want to talk a little this afternoon about the question of government secrecy. And I always find the best way to begin is to explain what it is all about, which is best told by a story: an Armenian ran through a square in the Soviet Union shouting that Breshnev was a fool! Breshnev was a fool! He was arrested, tried, convicted and sentenced. He got five years for insulting a leader of the Soviet Union and 75 years for revealing a state secret.

The situation now in the United States is one in which there is an enormous amount of secrecy about what goes on inside the executive branch. Now we are sometimes told that there isn't any secrecy at all. That in fact the government is incapable of keeping secrets, and that everything appears in the newspaper. It turns out that of course a great deal does appear in the newspaper, but often those are things that people inside have some reason to get out. When nobody has any reason to get it out very important things remain secret. We find out about them, if at all, many years later. For example, we have now learned a great deal about American policy in Chile from the Senate Intelligence Committee which has just released its case study of American intervention in Chile. And from that report you will learn a great many things about American policy toward Chile which I think nobody outside the government knew. For example, many of us thought that the American involvement in Chile had to do with trying to maintain in power the Christian Democratic Party because it was a democratic party which stood for the highest ideals that the United States supported. It turns out if you look at that report, that American policy in Chile had one simple objective--to keep Salvatore Allende from coming to power. And that indeed our first contacts and relations were with the extreme right in Chile. It was only when we concluded

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that the extreme right had no chance to win the election in 1963 that we decided that we would have to back Mr. Frei, the only possible winning candidate. You also may have thought, as many of us did, that Mr. Frei knew that he was an ally of the United States in these election battles. It turns out that the United States decided not only that we should intervene to help him win the election, but that he should not be told about this. This was apparently a close decision and we finally decided in our wisdom that it was better not to tell him that we were helping him. Unfortunately it appears that in the next election nobody told the party that a lot of the money that it had gotten mysteriously in the early 1960s was not going to arrive, which left them in a somewhat confused state.

We also did not know, even if we were careful newspaper readers, that once the Allende government was elected the United States set out to destroy over 150 years of constitutional government in Chile simply for the purpose of preventing Salvatore Allende from coming to or remaining in power. Nor did the editors of TIME magazine know, when they got a briefing from the CIA about what would happen if Allende came to power, that that was part of a CIA propaganda campaign to scare the people in Chile into thinking that if Salvatore Allende came to power people would be picked up in the middle of the night, mysteriously disappear, be tortured and shot. (That turned out to be true in the same way that voting for Barry Goldwater got us an escalation of the Vietnam war.) The CIA was conducting a propaganda campaign to scare the people of Chile. And when they heard that TIME magazine might write a balanced article about the consequences of Allende coming to power they subjected TIME magazine to the same propaganda campaign.

That was just one set of episodes and incidents which we've now learned about which were in fact kept secret from most of us even if we read the newspapers carefully. And we know of a great many other episodes. We know for example that when the United States introduced a large number of American troops into Vietnam in 1964, we were all told that this was at the urgent request of the South Vietnamese government. No careful reader of the newspaper could have discovered that the South Vietnamese government was against American military intervention in Vietnam, that indeed we had to twist their arm and threaten to withdraw our military aid until they finally acquiesced in permitting us to send in our troops. And then we twisted their arm again, and they acquiesced again in allowing us to say that we were going in at their urgent request. We know now that in 1969 the Nixon administration decided to bomb Cambodia, and that it conducted a bombing campaign which was kept secret from March of 1969 until 1970 in April, when it

invaded Cambodia. And when we invaded Cambodia we announced that up until then we had observed the neutrality of Cambodia. One could go on and on to show that while a great deal comes out, a great deal of very important information--information which vitally affects the way in which we think about our government and what it does--is in fact successfully kept secret.

Part of the reason for this is that nobody inside the government feels an obligation to make things public. There are people in the government with all sorts of responsibilities; there are men in the Treasury running around worrying about whether we're losing too much gold; there are people in the Agriculture Department who run around worrying about how much grain we produce; there are other people who worry about whether the coal is mined properly, and almost any interest and concern that anybody might have is reflected in some bureaucratic entity. However, there is no group which sees as its responsibility to secure the release of information important for public debate on national security issues. Nobody in the process ever stops and says "do we have a right under the Constitution to keep this secret, do we have an obligation to the public and the Congress to make this public." Rather everybody assumes that somehow there is a "hidden hand" here which will insure that constitutional rights and constitutional obligations are observed. And people go about the business of trying to get done what they want to get done--the Air Force wants more airplanes, the State Department wants good relations with Brazil, the Treasury wants to keep the gold, and so on. Within the government information is seen as a form of power. The control over information, the ability to keep information from other people in the bureaucracy, in the Congress, and in the public, and the ability to leak information when it would help you to leak it, is seen as a major source of power and influence within the government.

This means that information gets made public, that the public and the Congress find out what is going on, when somebody inside the government decides it is in their interest to have you find out what is going on. So that if somebody inside doesn't like the direction of the SALT negotiations, he may decide to make public the fact that the Soviets may have cheated around the edges of the SALT agreement. But until somebody decides to carry that fight to the Congress, you never learn whether there had been violations, or whether there had not been violations. Similarly, one learns the information on Chile only when finally a CIA director feels forced to reveal that information to a Congressional committee. Then, through a series of accidents and acts of one kind or another, it finally gets

made public by somebody who decides it is in his interest to have it made public. Often the information which the public and the Congress needs, nobody in the bureaucracy has an interest to make public--precisely because the people in the bureaucracy who know about the thing are the people who are in favor of it. And the process within the bureaucracy is one of cutting off the opponents of the policy in part to prevent them from leaking. The bombing of Cambodia, for example, was carried on by a very small group of people, almost all of whom were in favor of bombing Cambodia, and none of whom had an incentive to leak that story to the press. And therefore there was a time in which we did not hear about it. One of the consequences of trying to keep everything secret, is that the circle narrows, fewer and fewer people get cut in on a policy precisely because there is a fear that others will leak it to the Congress or the public, and of course sometimes things do leak--as the Cambodia bombing story did in May of 1969. This leaking then produces a paranoia, because the reaction of the President is always "I have a right to make things public when it will help me, but nobody else has any right to make it public, and certainly the public doesn't have any right to know unless I decide the public has a right to know." So that Mr. Ford, for example, is still telling us that the assassination report of the Church Committee should not have been made public because it would embarrass the United States abroad--as if anyone abroad needed to be told that the United States had been meddling in Chile, in the Congo, in Cuba, and in other countries. There was nobody in those countries for whom that was really a secret. But the President decided that it would not help his political position to have that made public; so he wrote a solemn letter to Senator Church, and indeed to every member of the Senate of the United States, saying that the release of that report would severely jeopardize the security of the United States. And I suggest to any of you that you read that report and see whether you don't think that the President is using the words "severely damaging to the security of the United States" in a somewhat peculiar way when he tells you that that release would have that result. But when the leaks occur paranoia sets in, telephones get tapped; people get followed, people get fired, people get put under clouds of suspicion, all in an effort which--as far as we know--has never been successful, to try and track down the leak of the information.

We have been trying under the Freedom of Information Act to get out some of this information that the government is trying to keep secret, and we've been somewhat successful. We've got out some interesting documents, including Colby's report to Ford on the CIA's domestic activities. But we've also learned a lot

about the government's attitude toward secrecy. And indeed the most interesting document I think we've received in this whole battle with the government over the Freedom of Information Act, is an affidavit from a woman named Jean Davis who is the staff secretary of the National Security Council. We asked the National Security Council to give us a list of the study memoranda that had been sent out since 1969. These are memoranda in which the President says he would like a study on Peru, or on the Middle East, or on some particular problem. And then a study is done and sent back and some decisions are made. We asked, not for the study, not for the decision, but for simply a list of the titles of the study memoranda, which would show what subjects the government studied. And then came a very long affidavit listing forty-nine reasons why we should not have this document, of which the last was really the most interesting. Ms. Davis said that if the government made public a list of subjects of studies which were currently underway, this would alert pressure groups within the United States as to what subjects the President was thinking about making decisions on. These pressure groups would then bring pressure to bear on the Congress and on the executive branch to influence these decisions. This would interfere with the orderly, rational process by which the President made his decisions about foreign policy questions. Therefore it would be damaging to the national security to release this list of studies. Well, we came back--we have exchanges with her called "interrogatories and answers" which are great fun--and so we wrote back and said did she think that the executive order on classification--which says you can only classify information that if released would damage national security--justified keeping information secret for the purpose of preventing pressure groups within the United States from learning about it and influencing the government policy. Back came her answer, and it said not only did the executive order permit the classification of this material, but it required it, because the executive order said that information must be classified and kept secret if its release would injure the national security. Since interfering with the President's ability to make orderly, rational decisions, without the influence of pressure groups, would interfere with the successful promotion of national security, the executive order required that this information, in fact, be classified.

This is a very good illustration both of the mentality of the executive branch, and also of the current state of anarchy in which we live. We live in a state of anarchy in which the executive branch, by executive order, decides what information should be kept secret and what information should not be kept secret.

The executive branch has this very strange notion that executive orders apply not only to officials of the executive branch but apply to private citizens and to the courts. And they have been marginally successful. The Marchetti injunction that was mentioned earlier was based on the notion that the courts should insist, as they have done, that Mr. Marchetti, who is a private citizen now, not say anything that the government says was classified when he worked in the government. In the Pentagon Papers indictment the government was basically trying to put Daniel Ellsberg in jail because he gave some part of the Pentagon Papers to Tony Russo who had a clearance but not a "need to know"; and therefore violated the rules of the executive order, and therefore, the government said, had violated the espionage laws of the United States. The executive branch has also been taking the position that the Congress has no right to release information that the executive branch says is classified. One of the results of the Church Committee operation has been I think to destroy that myth. The Church Committee has now made public the report that the National Security Agency reads all our cable traffic, without the security of the United States being jeopardized. It has now made public its assassination report. It has now made public its Chile report. In the process the Congress of the United States has discovered a strange thing: namely, that executive orders cannot bind the Congress and that they are free to make information public even if the executive branch says the information is classified. The problem of course is to get the information from the executive branch so that it can be made public. The only way that one can do that now, unless one is the chairman of a congressional committee, is to make a request under the Freedom of Information Act. We have made a number of such requests and, as I said, gotten some information. We're very limited by the fact that the Freedom of Information Act says that the government can keep information secret if it is properly classified under an executive order. All the government has to do is prove that it is following its own standards. We've found in one case that the man who classified the document had never seen the executive order. When presented with the criteria in the executive order for classifying material, he said he'd never heard of it before and had in fact invented his own standards for classifying the information. Nevertheless, all the courts appear to be able to do is ask: has the government met its own standards? The problem with the government's own standard, apart from the fact that they abuse it, is that it doesn't have any notion of balance in it. It simply says that information can be kept secret if its release could reasonably be expected to cause damage to the

national security. There is no balancing of that reasonable expectation of damage against the value to the public of free public and congressional debate on the issue. So that you can't come into the court and say "look, it may be true that there will be this very small damage to foreign policy as the State Department defines it, but on the other hand the public has a right to know this information and therefore it should be made public." If the government can prove any sense of damage, then the court must order that the information be kept secret. For example, in one Freedom of Information case that we now have pending we asked for a background press conference by Henry Kissinger on the SALT negotiations. And the government gave us, to our surprise, most of the background press conference, but they omitted one passage which they describe in an affidavit as "containing the views of the Secretary of State on a strategic system currently under negotiation." Now that strategic system is the Soviet airplane called the Backfire bomber. One of the two things holding up the SALT agreement now is the American insistence that the Backfire bomber be counted in the Soviet total under the SALT agreement. At this background press conference that Kissinger held right after Vladivostock he was asked by a reporter "will the Backfire bomber and the American F. 111 be counted in these totals they had agreed to?" And the Secretary of State, identified as a high government official speaking on background, said "no," that it was clear from the discussions that neither the Backfire bomber nor the F. 111 could be counted in the totals; the Soviet Union could not have agreed to that total if the Backfire was to be counted. The U.S. government has now changed its mind and decided that the Backfire should be counted, and so the statement by the Secretary of State that it could not possibly be counted in the agreement, becomes a secret which the government says should not be made public. I would be inclined to argue, and I would like to be able to argue to the judge, that whatever harm might result from making that fact public is far outweighed by the fact that the people are entitled to know, and the Congress is entitled to know, that the current position of the U.S. government is diametrically opposite of what the Secretary of State said was his understanding of the agreement he negotiated a few days after he negotiated it. But in order to persuade the judge to make that public now, we would have to convince her that no harm could possibly result, or could reasonably be expected to result, if that information was going to be made public. That's a very hard thing to convince a judge of in the face of an affidavit from a senior State Department official that he knows that there would be damage to these very delicate SALT negotiations if that information was made public.

I think that a need now exists for Congress to change the law, and in effect to say that only very limited categories of information can be kept secret--information whose release really would cause serious harm to the national defense, information about weapons design or about military plans, about diplomatic negotiations. And even in those cases the legislation should require that on request under the Freedom of Information Act, the court should balance the government description of the harm that would result against the public's right to that information. The information should remain secret only if the court determines that the government has made out a case of harm that is compelling and overwhelming and clearly outweighs the value to the public of having information made public. I think it's clear that many things have been done abroad in the interest and in the name of the American people, which the American people would never have tolerated if they had known about it. I think it is also true and beyond doubt that many things have been done to American citizens within the United States in the name of national security, and in the pursuit of this secrecy of national security information, which is totally inconsistent with the Constitution. And I think we will change those two things only when Congress changes the secrecy system, prevents the government from keeping secret most of what it keeps secret, and insists that any secrecy involve a balancing of the public's right to know against the government's claim of secrecy, with that balancing supervised by the courts.

GOVERNMENT SECRECY

SUMMARY OF ADDRESS BY FRANK N. TRAGER

Before formally beginning, Professor Trager referred to the Backfire bomber/SALT negotiations issue, discussed by Halperin. It was possible, he said, that following Kissinger's original agreement information about Backfire had changed, there making proper the reintroduction of Backfire into the SALT negotiations, along with our new cruise missile. This would illustrate how events may change in the course of debate, that the public right to know is by no means absolute, and that by and large unless our representative system of government is changed, it is not the American system to run the country by an informational system or plebiscite.

He would address himself, Trager said, to the problem of government secrecy with respect to one issue--the intelligence community. Taking a cue from Melvyn Douglas's reading on the right to think, he would think through with the audience about the place of the intelligence community in the United States since the agencies were established in 1947, and what may happen as a result of the current Church Committee investigation in the Senate and the Pike Committee investigation in the House.

He would not concentrate at this meeting on the sins of foreign intelligence activities, of which there were many, nor on violations of the First and Fourth Amendments, although these all obviously give us great concern. The Supreme Court has held with respect to those two Amendments that an intrusive investigation of an American citizen must have a sufficient basis to warrant an investigation and the particular investigative practices employed; that the government's monitoring of a citizen's political activities requires even greater justification; and that the scope of intrusion on personal privacy must not exceed the degree reasonably believed necessary; and finally, with certain exceptions not sharply defined by the Supreme Court--or by anybody--these conditions must be met, at least for significant investigative intrusions, to the satisfaction of a non-involved body such as a court. For these reasons the CIA, when it was established, was denied law enforcement powers, the right to police or subpoena or even to have any kind of internal security functions. But so far as the First and Fourth Amendments are

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concerned, Trager continued, our individual liberties are not absolute, as Justice Holmes pointed out.

He would discuss both the role of the intelligence agencies as established by law in a duly democratic process, and the rights and duties of both the agencies and the legislative branch as defined by the enacting legislation. Prior to World War II this country had no agency comparable to the CIA, the National Security Agency, (the code agency), or the later-created Defense Intelligence Agency; during war time we had relied mainly upon the intelligence community of the military services, and in peace time we had relied upon the State Department, which like all other foreign offices has historically performed the job of overt and covert spying in the countries to which the embassies have been accredited. That has been the historic role of an embassy from as far back as history is recorded. But at the end of World War II there was an important national debate about the military institution and the intelligence activities that had been conducted under the Office of Strategic Services.

This debate eventuated in the National Security Act of 1947, amended in 1949 and 1958. That act combined the Army and the Navy into what is now the Department of Defense and with the newly created Air Force subsumed each under civilian Secretaries who were themselves subordinated to the Secretary of Defense. The act also created the Joint Chiefs of Staff and the National Security Council, a kind of sub-cabinet, to serve at the pleasure of the President on what were called "national security matters." It also created the Central Intelligence Agency, and that too was the first time that any kind of centralized intelligence activity had been undertaken by our government in peace time. The law which set up the CIA gave it a number of directives: 1) to advise the National Security Council about government intelligence activities related to national security; 2) to make recommendations to the National Security Council for the coordination of intelligence activities which relate to national security; 3) to correlate and evaluate intelligence relating to national security; and 4) to provide for the appropriate dissemination of such intelligence within the government, using, where appropriate, existing agencies and facilities. Last, and 5) it was to perform such other functions and duties relating to intelligence, affecting the national security, as the National Security Council may from time to time direct. This in effect said that the newly created National Security Council of the Presidency would direct and control the intelligence activities of the government under the law, and with respect to both overt and covert intelligence activities. The other function, the

fifth stipulation, in rather carefully disguised language provided for both overt and covert gathering of intelligence, and for what is called operations or "dirty tricks." That law was amended in 1949 by an act directly related to the CIA, amended again in 1958, and by and large has been on the books since that time.

Many practices of the intelligence agencies have been recently revealed; more of them have been detailed by the media over the last twenty years. (For example, he said, when the chairman announced a grant from the Kaplan Fund he had remembered that it had been publicly identified as a sluice for the CIA during the late 1950s and 1960s, passing money along to good causes which a number of those in the room actually participated in and supported.)

The intelligence community includes the FBI, the Defense Intelligence Agency, which supervises and controls the intelligence services of the Army, Navy, and Air Force, the National Security Agency, and a number of agencies that are grouped under the United States Intelligence Board (over which presumably the director of the CIA has the legislative authority to preside, but whose intelligence estimates may not be denied to higher authority by the CIA director). Through all these agencies, the executive branch of the government has for the last 28 years at least been involved in intelligence gathering, collection of intelligence, various clandestine activities, various covert activities, various "dirty tricks"--all with the full knowledge of the executive branch and with the full knowledge of the Congress.

The same act and amendments which set up the intelligence agencies also created oversight committees in the Congress. There were four, or at least parts of four: the two Armed Services Committees, and either the Foreign Relations or the Appropriations Committees of the Congress serve as oversight committees. The budget of the CIA and related agencies is approved by the full Congress and the Bureau of the Budget, though the budget itself is secreted or put in the account of various other agencies. So the Congress--our representatives--have the right and duty as oversight bodies to know what the CIA and other intelligence groups are doing. Sometimes it elected to exercise that right, sometimes it did not want to know what was going on in order not to reveal secrets, either accidentally or purposely; by and large, Congress shares full responsibility with the executive. The two parties share in a reasonably accurate knowledge about the intelligence community, its activities, responsibilities, failures, and how it finances what it does.

In light of all this, Trager asserted, although there have been signs of

omission and commission--such as the Bay of Pigs, and the assassination possibilities published in the recent Church Report--the principles of our government have been conformed to, even though we have sometimes, and seriously, failed to execute those principles with the best interests of the country in mind.

With respect to controls, in addition to congressional oversight through the budget and various hearings and special briefings in Congress, there have been a number of special commissions and panels over the years: the Dulles-Jackson Korea report to the National Security Council on the CIA in January 1949, the Jackson Report in June of 1953, the Doolittle Report in September of 1954, the Clark Report in 1955, the Sprague Report in December 1960, and so on throughout the 1960s and into the 1970s. These panels and commissions reported on the activities of the intelligence community in sufficient detail for those who had the right to read them, and many did, Trager said. For the proposition that the public has a right to know is a simplistic one, and does not, in fact, accord with our Constitution.

Trager then addressed two last questions: Is there a need for peacetime intelligence operations? And can we correct such abuses as have been uncovered (not only in this year, but in the last 28 years)? The need for intelligence, he thought, has been generally accepted, not merely in terms of this rather loose phrase "national security," but because our world is one of adversarial relationships--both on a government basis and on a people-to-people basis. This guarantees the continuation of an intelligence apparatus--and the intelligence apparatus of the main adversaries, the KGB of the Soviet Union, is no slouch in this matter, although he did not suggest a mirror image of the KGB. (He himself believed, asserted Trager, that the likelihood of a detente is as distant today as it was at the end of World War II; in this he agreed with the Schlesinger rather than the Kissinger point of view.) And so, he asserted, the continuation of a global adversarial system, and our own constitutional requirements of providing for the common defense, necessarily require the continuation of an intelligence community geared to acquiring some knowledge about the capabilities and the intentions of the adversary.

When excesses occur in the pursuit of that function Trager thought both the executive branch and Congress should take immediate steps to halt them. And he did not doubt that both the Congress and the executive branch knew, for example, about Cambodia and the whole of the Vietnam story (and he had spent the last 25 years working on Southeast Asia). The Congress knew in the appropriate bodies and elected annually, through the power of purse if in no other way, not to

disapprove of the kind of recommendations sent down by Mr. Halperin from VOD, etc. The entire way in which Vietnam was conducted, though all of its conduct was not necessarily known by each and every one of us, all of this conduct was known to the appropriate authority under our kind of federalized constitutional representative government.

Finally, Trager stated his belief that abuses could be corrected. After 28 years, the law under which the intelligence community operates could certainly be refined. He agreed with Cyrus Vance's recent testimony about the need to continue covert operations, but under more narrow circumstances, and with greater controls. And therefore, Trager concluded, what is now required is not to throw out the baby with the bath, because the world wouldn't permit it, but to refine the law and the controls that a democratic society is always able to institute when it wishes to do so.

GOVERNMENT SECRECY

QUESTION PERIOD

. . . .

Halperin: Regarding S. 1, a substitute bill has been introduced in the House. This bill is consistent with a civil liberties position, as S. 2 is not. An effort will be made if the bill does move in the House simply to substitute that bill for S. 1. So I think it's a fight that still needs to be made, and one needs to put all the pressure one can now on the members of the Senate Judiciary Committee.

Chairman: Thank you. Professor Trager.

Trager: I'd like to make one comment on that. I agree that S. 1 as it's presently drafted leaves so much to be desired that I hope the same thing happens to it that Mr. Halperin does. On the other hand I would like to call your attention to the fact that Great Britain has had for, oh, decades an Official Secrets Act which serves a purpose analogous to what S. 1 is supposed to serve, and what the House bill might conceivably serve. Experience under the British Official Secrets Act has been completely consonant with British civil liberties for all of the decades that it has been on the books there. I'd like to make, I'd like to . . . can you hear me?

Audience: I thought Great Britain had recently repealed its Official Secrets Act.

Trager: No they have not. The current group in government has thought about amending it, but it has not yet done so. The act is still on the books, and my guess is it will remain, or conceivably be made somewhat less stringent than it presently is. There is no, I don't know of any great movement in England to abolish it. Now with respect to the criminal law and the espionage act in this country, if we had anything like the British Official Secrets Act Mr. Ellsberg would now be in jail, where he belongs.

Audience: (laughter and chatter)

Chairman: Ah, ha, ha, all right. Next question, comment, or hiss, or whatever. Yes. . . .

Audience: [to Professor Trager] I don't want to misquote you, but I did take some notes down that I thought were significant. At one point you make the statement that "the public's right to know is not absolute." Another point you made was that

"we did not run this country by plebiscite or" and I didn't get your other word. You also said that persons who had a right, or were the appropriate persons, were told about certain things that had been going on for the last 28 years. And then you further made mention that certain of these acts were done with the full knowledge of the Executive Branch and certain groups within the Congress. And that raises the question to me, I'd like you to address just what is the public's right to know from your viewpoint, and the fact that certain people know--who are the appropriate people who should know.

Trager: The Supreme Court has not defined "reasonable" as yet, nor has it defined "appropriate" as yet. And therefore I'm not going to usurp what I would eventually think to be the privileges of the Supreme Court. Although I will say this: in terms of the U.S. government structure, we are a representative government, we elect representatives to the Congress, to both houses of the Congress, and we elect the Chief Executive and his assistant the Vice President. In those terms we pose in them a grant of authority which they are to exercise in our name. And that is the way we are constructed. The Constitution provides for separation of powers, it also allocates--not always clearly--it allocates separate powers to each of the three branches of government. And that is the way we are structured. And as far as I can say, as far as I can see, it is somewhat like Aristotle's definition of the good. What is the good, Aristotle was asked, how do you reach the mean he was trying to achieve. And on the one hand he said there is something called kalogus [cowardice], and on the other is something called foolhardiness, and in between is something called courage, which is the good. And then you will perhaps find out what is the mean between foolhardiness and kalogus, and this is a matter of judgment. And I can't give you any other answer, than either the Aristotelian one, or the answer of representative government.

Audience: Mr. Halperin, under the Constitution, article 4-P, I'd like to read you the article . . . I'd like both of you to address it. It says that "no money shall be drawn from the Treasury but in consequence of appropriations made by law, and a regular statement of accounts and receipts and expenditures of all public money shall be published from time to time." Now is it correct that the intelligence budgets of this country have never been given to the Congress in one integrated form at any time since the 1947 act creating the National Security Council?

Halperin: I think that was a non sequitur. The budgets have been given to the Congress, or at least to certain members of the Congress, in secret; the clause you read requires that there be a public accounting of the funds. There has not been a public accounting of the funds. . . . The Rockefeller Commission suggested

that the failure to publish the CIA budget might have violated that clause of the Constitution. And I think that it's pretty clear that it does. The purpose of that clause was precisely to be sure that when the people voted and debated about their government, they knew how it spent its money. The ACLU has a law suit asking that the budget of the CIA be made public, and we have suggested to the court that it was in fact unconstitutional to keep it secret. . . . Now if you ask the Director of the CIA, Mr. Colby, whether you can make public the budget of the CIA, the total budget, without causing harm to the national defense, his answer is very interesting. He says "we could make that number public without causing any harm, but if we gave you that number you'd ask for more." He says "you'd want us to justify that number, and explain why we needed so much money, what we were spending it for. And before long we have three or four pages of justification, and that would be bad, and that would damage our security." "And therefore," he says, "I'm not going to give you the number because then you'll want more." And of course he's right. If he gives us the number, we will want more. But I think at least that number is required by the Constitution.

Chairman: Professor Trager, do you want to reply?

Trager: Yes. Let me give you the facts at the moment. I think there is a constitutional question there, and it has been either overlooked or ignored, or the Congress has seen fit to say that its action has conformed to the Constitution. For example, the Office of Management and Budget--the former BOB, now the OMB--has the CIA go through the budgetary process with it, so that conceivably the OMB in its initial and final going over of the budget does prepare the final CIA budget which goes to the Congress. That's step one. The OMB also exercises control over the resources allocated to the CIA--that's part of its duty. Step two is the fact that the General Accounting Office of the Congress is responsible for making an accounting and auditing the reports to the Congress. And in the case of the CIA, the act of 1949 specifically authorized the Director of intelligence to make confidential--that means unvouchered--payments. These payments constitute approximately one half of the total CIA spending beyond the GAO's audit authority. And the 1949 act further protects the CIA spending from GAO challenge by providing that the sums made payable to the agency may be extended without regard to the provisions of the law and the regulations regarding the expenditure to government funds. I would tend to agree with the speaker, the questioner, there, that there is a constitutional question here which up to this time the Congress has agreed--now here I use ambiguous wording--either to ignore, to violate, or to assume that

it's conforming to the Constitution. Or at least it is important to understand that the CIA and the intelligence community is operating within the present law.

Chairman: Burt Joseph

Audience: I'd like to ask Professor Trager a question. Do you know of any instances where the Executive Branch has either lied to, misled, or concealed from the Congress any information? And if so, whether that is a problem that should be dealt with, and how would you propose that be done.

Trager: I think that the Church Committee reports will give you detailed information on the fact that some operations and some decisions have been not given to the Congress. I think whether you use the word "lie" or not is an ambiguous, you know, it's a judgmental word. They have refrained from telling the truth, (audience chatter) and they have allowed (audience chatter)--Sure. And there's absolutely no doubt in my mind that the Congressional oversight committees have been perfectly willing, thus far, to live with executive privilege. And executive privilege is the secret--and I use that in its broadest possible connotation--has been invoked in order to carry out what the administration thinks is the role of the presidency in the conduct of foreign policy and national security policy. You have here a real conflict between the powers of the presidency with respect to foreign policy and the conduct of war, and the right of the Congress to declare war and fund it. For example, I think that Mr. Johnson was actually wrong in not asking for a declaration of war way back in 1965. But then you couldn't persuade Mr. Johnson or Mr. Rusk, so to do.

Audience: I'm sorry, but I don't think that that really answers the question. If the Congress makes judgments based on the information that the Executive Branch furnishes, and if the Executive Branch withholds the truth from Congress, what do you think should be done so that the Congress can exercise its constitutional responsibility?

Trager: The oversight committees had the right to investigate as thoroughly as they wished every proposition submitted to them by the Executive. And I do not know at first hand, but I have been told reliably, that the oversight committees had at certain times been unwilling to press their responsibility further. They didn't want to know about certain things. I can't do anything about that. I think the oversight committees have--in my judgment--I'm a strict constructionist on these issues, as I have tried to indicate by my reference to the declaration of war--I think the oversight committees did not fulfill their oversight responsibility. That's all I can tell you.

Audience: (unintelligible) Dr. Trager, what would you advocate to prevent the repetition of the kind of abuses by both the executive and the legislative branches in terms of governmental secrecy which you acknowledge has occurred?

Trager: I have two proposals in mind which are by no means original. One is to put the responsibility in the National Security Council, which has it at present, of complete authority over all acts--secret, clandestine, and covert--of the intelligence community. The National Security Council has devolved some of its responsibility on the Committee of 40, for example, which is a subcommittee of the National Security Council. It has had at different times other subcommittees. I am saying that 1) I believe that the National Security Council, in which the President sits, should have full responsibility over all covert, clandestine, and secret acts of the CIA, and be responsible for whatever operations the CIA undertakes. That is number one. You notice that even in the Church Report there has been a double-tongued series of statements to the effect that somehow or other the President wasn't really informed of what the National Security Council allegedly knew with respect to certain covert operations in Chile or in Cuba--not Cuba so much because the President knew there--or in the case of Eisenhower or Johnson or Nixon or Ford. This notion that the President did not know or wasn't told is in my judgment a dereliction of responsibility on the part of the President. And I think therefore that so long as we have the NSC--and I believe that it is a desirable institution--I would say it should have full responsibility for all acts and operations of the intelligence community. That's number one. On the Congressional side I see all the good reasons for having a joint--both houses--a joint intelligence committee that would really perform its function of both the power of purse, which it has, and also the power of inquiry on all matters that are secret, clandestine, and covert. And that it too take the responsibility which our congressional structure has put upon it. Those two essential reforms seem to me to be first order of business.

Audience: . . . I think that Mr. Drorbaugh of Beacon Press was involved in publishing the Pentagon Papers and I wonder if in retrospect, looking back, if you feel you damaged the national defense--was this a good or a bad thing when you came out with all that stuff? What do you think?

Wells Drorbaugh: I was not with Beacon Press at that time. . . . (unintelligible)

Trager: That's not the issue though. The issue. . .

Dr. West (?): That's the question. (general laughter)

Trager: The issue is Mr. Ellsberg's role in this. Not the publisher's role.

Mr. Ellsberg violated his oath, and betrayed that oath by purveying papers and giving them to an outside jurisdiction. (general agitation)

Chairman: Dr. West.

Trager: And it's criminal.

Audience: (much agitation)

Robert West: I want to answer the question that Professor Trager has phrased, because of what you're saying is the issue is not the issue with respect to the publication of the Pentagon Papers. My name is Robert West, I'm president of the Unitarian Universalist Association, a denomination of which Beacon Press is a part. . . . The issue there was that that was public information. Regardless of what happened to Ellsberg and what he may have done, this information was public information made public in the United States Senate . . . passed out to members of the press in Xeroxed form, and even run over the wire services, about 70,000 words of it. . . . And that was public information. And what we did was publish in book form the full text of those papers rather than a summarized edition, which the NEW YORK TIMES did. And the FBI and the Justice Department came after us. We had no contact whatsoever with Ellsberg, but they came after us and threatened to arrest our people and so on, all in the name of national security because we were merely making public through the wider members of the public which already really was on the public record. And my answer to this is that this did not damage national defense at all; in fact we heard from generals and admirals that they did not really know what was going on until they read this.

Trager: Please note that I did not say anything at all about the Beacon Press publications. As a matter of fact I bought a copy of your publication. I also bought other copies of the publication. I only address myself to Mr. Ellsberg. And the reasons are very simple: Mr. Ellsberg was a government officer--as a matter of fact he had taken the opposite point of view when he was Mr. Porter's assistant in Saigon. He changed his view. He had a right to change his view. But what he did was to violate his oath and take papers which did not belong to him, which were for better or worse classified, and he distributed them publicly. That's a criminal act. And for that, in my judgment, he should have been published, uh, punished. (applause and long laughter)

Halperin: As the person who classified the Pentagon Papers and gave them to Mr. Ellsberg, I think I should (general laughter) say something. He did not steal them. My little boy, the other day, asked me if it was true that Daniel Ellsberg had stolen the Pentagon Papers. And I said, no, that I had given them to him. (applause)

Trager: (unintelligible)

Halperin: He had a copy lawfully. He made a Xerox copy of that, which the courts have said many times is not in fact stealing. It is not stealing to make a Xerox copy of something and to return the original--which is what in fact he did. So he certainly did not steal anything. The government tried to claim that he had somehow violated, not the theft laws, but some legal notion of taking away the information. The government cannot own information. It is not a crime in the United States now, it has never been a crime in the United States, to take classified information and give it to somebody who the government says is not entitled to have it. For the simple reason that the classification system is an executive order, and the President of the United States in our constitutional system cannot create a crime by issuing an executive order. There is no such crime except in S. 1 which is not in fact the law of the land. Ellsberg was not indicted for giving classified information to somebody else. He was indicted under a statute which had been universally interpreted by everybody, by the Executive Branch and by the Congress, as applying only to cases where there was an intent to injure the national defense. The statute that he was indicted under was used for the first time in the Ellsberg incident, contrary to what everybody had understood it to mean before that, to punish somebody who was not a spy and who did not act without the intent to injure the national defense. We can argue, and we are in S. 1, as to whether the giving of classified information should be a crime, but it is not now a crime, and Ellsberg did not commit a crime by giving classified information.

Chairman: Could I just pursue that? Because I understood that the counsel for the government made the claim that they <u>do</u> own certain information. That was one of their major points if I understood. And what is the disposition of that part of the thing, because I think that's central to most of the points that have just been made? If they own the information, it doesn't make any difference whether you stole a Xerox or the original or anything else.

Halperin: Well, the government doesn't own information. . . .

Chairman: They claim they do.

Halperin: No, well the government doesn't claim . . .

Chairman: They did in that suit. (unintelligible)

Halperin: . . . . I would rest on Senator Hruska, that noted civil libertarian, who in a recent comment on S. 1 said that the delicate task of balancing the public's right to information against the government's right to military secrets is so difficult and so delicate that it should only be done in a statute specifically

designed for that purpose. And no statute which is designed to protect government physical property, or is designed to protect the government from fraud or other acts of that kind should be used to punish the alleged misuse of classified information. And that seems to me absolutely clear was always the intent of Congress, which again was violated in the Ellsberg indictment.

Chairman: Okay thank you. Just one more I think, and then we're going to bring it to a halt.

Audience: Is there a difference between what Professor Trager has spoken of as "violating his oath," and what Mr. Halperin has spoken of as "(unintelligible) taking public information?"

Trager: The answer is yes. He took a kind of oath when he became a government servant, not to do certain things--among which not to divulge classified information. He violated that.

Chairman: And you're agreeing.

Halperin: I agree with that. I think he'd agree with that too. And he thought when he did it that he violated the law and expected to go to jail. It happens that he didn't violate the law--he did violate his oath. And I think the question of when it is appropriate for somebody to violate an oath they take is a very difficult question. He thought he was in possession of information which showed illegal activity, and he thought if he made that information public it would stop those illegal activities. And I think one can agree with his assessment of whether the activities were illegal or not, or disagree with it, or agree with his assessment of what he did. But it is clearly a case, and I don't think he would deny that, of somebody violating a solemn oath because of a belief that there was some higher principle involved.

Chairman: Someday we must have a conference on civil disobedience maybe. Well these two gentlemen have clearly made us--yes, surely.

Audience: (unintelligible)

Louder!

Chairman: Do you want to use the mike?

Wells Drorbaugh: Oh all right. I'll be brief. I think Beacon did have the right to publish. And if I [had been] the director at that time, I would have published. The American Association of Publishers did not take a stand as an association, but other publishers did support Beacon at that time. And as far as I am concerned, that is a principle too.

Chairman: I was about to say that these men have really made us think, and I think we ought to express our appreciation to them once again. (applause) Thank you very much. (applause)

CLOSING REMARKS

WILLIAM F. FORE

By way of summary, I would like to tell you two or three things that have occurred to those of us on the Steering Committee today. First, I think this session has once again shown the value of a diversity of opinions and the free discussion of these kinds of issues. If you agree with that, a next step might very well be for some of the national organizations to which we all belong to try to begin to achieve this same kind of opening up of the issue and discussion of the issue--where we are within out own organizations. We've discussed this in the meetings of the National Ad Hoc Committee. I throw it out to you as something to consider in this wider group today. How can your organization--locally, nationally or regionally--begin to raise these questions, raise a diversity of viewpoints on them? Because I think they are central to our American life.

A second point: we do plan to try to make these proceedings available in some form. . . .

A third point is that we certainly need more local exposure to these issues. And most national organizations do have local entities. Now, I know that most of our organizations don't really have First Amendment or freedom of speech issues as a top priority. It is just not a top priority for, say, a psychology organization or church organization or even an educational organization. Nevertheless, you could be the catalyst, by going back to your leadership and getting it interested in this issue; developing programs of different kinds--whatever fits your organization--for local development and ferment in this area. Because I firmly believe that while right now, you now we may be in a relatively easy situation, the pendulum swings, back and forth and one of these days there will be a new McCarthyism. We need to prepare for the understanding of those issues now, rather than wait until that time. Because then, I am convinced, it is too late. So use our resources, use our gigantic national office, Leanne Katz part-time, when you can get her on the phone. But she does have literature, materials, that we can make available in quantity. She does have ideas for speakers and people who can be on your programs. We can make program ideas available. So use us if you can. This next year is an ideal year to begin to look a little more intensely at what our representative, republican, democratic form of government means. And I hope very much that all of us can begin to focus on this issue.

Finally, we will be having another meeting of the Ad Hoc Committee itself. We don't know when, we'll start planning that one now th t we've gotten through this

one. We'll let you all know, it will be sometime in the spring and you are all cordially invited. Now is there anything else that anyone wants to say? Yes? (Inaudible question). Thank you. (Applause) I accept that for the whole Steering Committee. Thank you, because we really thought it was something that would be useful, and I think that we're convinced that it was useful. We'd also like your feedback and comments because we'd like to make it more useful if we do it again. So with that we'll thank you all and invite you if you care to come to our spring meeting . . .

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Noritada Otaki
Columbia University

Kathleen H. Paroline
Rhode Island Library Association
Intellectual Freedom Committee

Gilda Parrella
Associate Professor, Communication Arts
Loyola University

Anne Prichard
American Civil Liberties Union
Privacy Committee, Church-State Committee

Nelson Price
United Methodist Communications

John B. Putnam
Association of American University Presses

Doris L. Pullen
Unitarian/Universalist Association

Samuel Rabinove
The American Jewish Committee

Alan Reitman
American Civil Liberties Union

Ernest D. Ricca
Directors Guild

Joseph Robison
American Jewish Committee

Erma Rose
National Council of Jewish Women

Josie Rosenfeld
National Ad Hoc Committee Against Censorship

Craig Schiller
Motion Picture Association of America

Ned Schnurman
The National News Council

Joseph Sherry
LONG ISLAND DOLLAR

Bruce A. Shuman
Indiana Library Association
Intellectual Freedom Committee

Ida Sloan Snyder
National Board, YWCA

Dorothy Spears
Council of AFL-CIO Unions for Professional Employees

Gay Stebbins
McGraw-Hill Book Company

Ada Mae Stein
National Council of Jewish Women

Frank N. Trager
speaker; Professor, International
Relations, New York University
Director of Studies, National
Strategy Information Center

Ray Tucker
National Council of Jewish Women

Carl A. Utberg
Silver Burdett Company

Harold H. Viehman
American Baptist Board of Education
Ministries in Public Education

Robert West
Unitarian/Universalist Association

John Wicklein
School of Public Communication
Boston University

Pennie Wilfong
National Council of Churches

K. E. Wilkerson
Salisbury State College, Salisbury
Unitarian/Universalist Fellowship

Alice Willett
National PTA

Elihu Winer
Writers Guild of America, East

William C. Winslow
United Church of Christ

NATIONAL AD HOC COMMITTEE AGAINST CENSORSHIP

The National Ad Hoc Committee Against Censorship is an alliance of non-commercial national organizations, including religious, educational, civil rights and professional groups. They are united in concern about constraints on the First Amendment.

The Committee helps its participating organizations to educate their own members--millions of individuals around the country--about the dangers of censorship and how to oppose it. The organization of state and local alliances is coordinated from a Chicago office. The Committee also carries out educational work with the public directly and through the mass media.

Participating Organizations

American Association of School Administrators
American Association of University Professors
*American Civil Liberties Union
*American Jewish Committee
*American Library Association
*American Orthopsychiatric Association
*Associated Councils of the Arts
*Authors League of America
*Child Study Association/Wel-Met Inc.
*Directors Guild of America
Executive Council of the Episcopal Church
Lutheran Church in America
*National Council of Churches of Christ
*National Council of Jewish Women
*National Council of Teachers of English
*National Education Association
*Speech Communication Association
*The Newspaper Guild
*Union of American Hebrew Congregations
*U.S. National Student Association
*Unitarian Universalist Association
United Methodist Communications, United Methodist Church
*Writers Guild of America, East, Inc.

STATEMENT OF CONCERN

The steady erosion of First Amendment rights, stemming from the Supreme Court's 1973-74 obscenity holdings, menaces ever more critically the freedom of communication that is the indispensable condition of a healthy democracy. In a pluralistic society it would be impossible for all people at all times to agree on the value of all ideas; and fatal to moral, artistic and intellectual growth if they did.

Some of the . . . [participating organizations] reject all barriers abridging access to any material, however controversial or even abhorrent to some. Others reject barriers for adults, so long as their individual right of choice is not infringed. All of us are united in the conviction that censorship of what we see and hear and read constitutes an unacceptable dictatorship over our minds and a dangerous opening to religious, political, artistic and intellectual repression.

*Formally endorses Statement of Concern

APPENDIX I

A CENSORSHIP ROLE PLAY

After her classmates voted GO ASK ALICE the best book in the Rockport Junior High School Library, Diane Comstock, fourteen years old, borrowed the book from the school library. Mr. Comstock, her father, curious about how the book compared to the TV version, picked it up and leafed through it. After glancing at a few pages, he rushed to the school library and confronted Ms. Miles, the school media specialist. Mr. Comstock roared that the book had tragically brought his daughter's years of innocence to an end and demanded to know how such filth came to be in the school media center. He further exclaimed that he didn't want his daughter to read such trash nor did he believe anyone's child should be allowed to read it. Ms. Miles quietly asked him to step into her office and discuss the matter. She explained that the school system had an established procedure for dealing with complaints and offered him a request-for-review form. She told him that when it was completed, the form would be submitted to the review committee. Mr. Comstock left, promising to return with the completed form. Ms. Miles called her principal and informed him of the incident.

A few days later Mr. Comstock returned to Ms. Miles' office with the completed form. During that time he had learned that ALICE was a required text for a discussion on drugs in the 9th grade health science course. He told Ms. Miles that he had shown the offending excerpts to representatives of the Rockport Concerned Parents Committee (RCPC). The committee demanded that ALICE be removed from library shelves, and all reading lists and that a search for other "offensive" books be initiated. Ms. Miles explained that as far as the library was concerned the formal review procedure would now be initiated in regard to GO ASK ALICE, but the parents' request for mass search of library shelves and removal of the book from reading lists would have to be presented to the school board.

Before leaving the school, Mr. Comstock stopped by the health sciences department. He reiterated his complaints to Mr. Nelson, the drug education specialist. Mr. Nelson was sympathetic but remained firm. He explained that GO ASK ALICE was the best anti-drug book he had read to date and the only book that conveyed an anti-drug message in the language of his students. He, in turn, lent support to Ms. Miles' statements by informing Mr. Comstock he would have to take his complaints to the school board.

A few weeks later, in a school board meeting before a capacity audience, the review committee representative reported the committee's decision on GO ASK ALICE. Mr. Comstock and members of the RCPC were also present.

Further Facts in the Case

1. Rockport is a suburban community within commuting range of a major eastern city. The bulk of the population is well-educated and vertically mobile. While less than 2% of the population is at the poverty level, Rockport has many strugglers, blue-collar workers and "new" executives. For many of the residents who grew up poor, Rockport is the American dream come true. The population is overwhelmingly white.

2. The Rockport Concerned Parents Committee was formed three years ago by parents who were enraged by a newly introduced sex education program in the junior high school's curriculum. The ensuing controversy rocked the small town and resulted in several angry confrontations between parents and teachers at school board meetings. After weeks of negotiations, school officials came up with a compromise proposal that was acceptable to RCPC.

Under the proposal, two lists of materials would be provided for the sex education course. Parents were requested to decide from which list their own children could read. Parents who did not want their children to participate in the sex education course at all could have them placed in an alternate class.

While the faculty and administration remained virtually intact, two members of the board of education were defeated in the next election by conservative opponents who had the support of RCPC.

The RCPC has remained organized since that time, but has been inactive.

3. The school system is well known among educators for its progressive outlook and excellent curriculum development. Faculty members are outstanding and many have advanced degrees in their subject specialties. The high tax base has provided the means for purchasing the latest materials and equipment. Due to a brighter than average student population, teachers feel a great deal of pressure to provide stimulating courses.

4. Ms. Miles is a recent graduate of library school. Prior to obtaining her master's degree she taught social studies for three years. This is her first professional position as a librarian - she has been at the Rockport library for 1-1/2 years.

5. Stephen Nelson. Mr. Nelson has been a teacher of health education courses for twenty years. His credentials are impeccable. He spends a great deal of his free time reading in the field and in formal continuing education courses. He is one of the rare teachers who is respected as well as liked by his students.

6. The members of the school board:

a. Suzanne Hames, Chairperson. A successful lawyer and a board of

member for over ten years. She is expected to be unbiased in her approach to the complaint. Known as a libertarian, some board members fear she may go overboard in her efforts to be "fair" to the complaining parents.

b. Lenore Stuart, member of RCPC. Mrs. Stuart, a housewife known as a pillar of the community, is active in many community and church organizations. She has taken an active interest in curriculum development and made the original complaint against the sex education curriculum. Her feelings against pornography are strong.

c. Phyllis Landry. Miss Landry taught for five years before leaving the field. She is currently the owner of a successful small business in the community. Was a member of the board during the sex education controversy, but remained "clean." Sometimes has trouble making difficult policy decisions, and so frequently ends up taking a middle-of-the-road position.

d. Michael Towne. Towne was elected to the board after the controversy. Known as a rock-bottom conservative, Mr. Towne is the local business bigwig. He built up a thriving plumbing business from a one-man, one-truck operation and is used to getting what he wants.

e. James A. Field. A reflective man. Mr. Field directs a large dairy business which has been in his family for four generations. He was elected to the school board as a result of the sex education controversy. Since that time he has had second thoughts about his inflexibility and anti-intellectualism of the past.

NOTE: Participants in the conference make up the capacity audience at the board meeting and have been assigned general roles such as a RCPC member, pro-curriculum parent, teacher, student, etc.

7. The school system has a written selection policy that is adhered to in determining library book purchases. It was developed five years ago by a joint committee of teachers, librarians and parent representatives of the PTA.

REQUEST FOR RECONSIDERATION OF LIBRARY MATERIALS

Title GO ASK ALICE **Book** X **Periodical** _____ **Other** _____

Author Anonymous

Publisher Avon (Prentice-Hall, Inc.)

Request initiated by Mark Comstock

Address 1562 West Houston Avenue

City Rockport **State** MD **Zip** 77701 **Telephone** BO-4-6161

Do you represent:

X **Yourself**
X **An Organization (name)** Committee of Concerned Parents
_____ **Other group (name)** _____

1. **To what in the work do you object? (Please be specific. Cite pages.)** Glorifies drugs, filthy language, sexual episodes, undermines respect for parents. (See attached page.)

2. **Did you read the entire work?** _____ **What parts?** I skimmed the entire book

3. **What do you feel might be the result of reading this work?** Exposes innocent children to debasing experiences of a mix-up adolescent; will lead to drug abuse.

4. **For what age group would you recommend this work?** 18 and above

5. **What do you believe is the theme of this work?** Thoughts on drug experimentation of an adolescent girl.

6. **Are you aware of judgments of this work by literary critics?** No

7. **What would you like your library/school to do about this work?**
_____ **Do not assign/lend it to my child.**
_____ **Return it to the staff selection committee/department for reevaluation.**
X **Other. Explain** Take it out of circulation

8. **In its place, what work would you recommend that would convey as valuable a picture and perspective of the subject treated?** Not necessary to have this kind of filth in schools.

Signature Mark Comstock

Date 11/24/75

APPENDIX II

REVIEW COMMITTEE REPORT
presented to the Rockport Board of Education by Susan Miles, ex-officio committee member
December 9, 1975

As a non-voting member of the library review committee, I have been asked to present the Committee's findings regarding the review of GO ASK ALICE.

In accordance with the procedures for review of challenged material, established by the Rockport Board of Education, the review committee met December 1, 1975 to consider the complaint of Mark Comstock. As you know, Mr. Comstock filed a formal request for review of GO ASK ALICE on November 24. In his complaint Mr. Comstock requested removal of the book from the shelves of the Rockport Jr. High School, citing "glorification of drugs and filthy language" among his reasons.

The five members of the review committee represent the student council, the Parent-Teacher Association, the English Department, the Social Studies Department and the History Department. All members read GO ASK ALICE as well as reviews of the book prior to the meeting. Giving due consideration to the material involved, the committee unanimously voted that inclusion of GO ASK ALICE in the collection of the Rockport Jr. High School library is in complete accordance with the educational objectives and book selection policy of the Rockport School System adopted by the Rockport Board of Education, June 15, 1970. The policy states:

1. The school learning resource center implements classroom activity and is an integral part of the curriculum, paralleling it at all points in all departments. The center exists primarily for educational purposes. It offers enrichment for the students and resource material for the faculty.

2. The selection of school resource materials shall be in accordance with the following objectives:

   a. To enrich the curriculum.
   b. To further the development of youth intellectually, emotionally, culturally, and spiritually.

3. The school board subscribes in principle to the statements of policy on library philosophy as expressed in the American Association of School Librarians' SCHOOL LIBRARY BILL OF RIGHTS.

APPENDIX III

Precis of GO ASK ALICE

GO ASK ALICE is purported to be the diary of a fifteen-year-old girl which details her experiences during a two-year involvement with drug experimentation. Alice is an insecure adolescent who is obsessed with her weight, lack of friends, and parental problems. She first becomes involved with drugs at a party after drinking coke spiked--without her knowledge--with LSD. Her experimentation gradually becomes an addiction, and she stoops as low as peddling drugs to children in order to support her habit. After running away from home, Alice resolves to kick drugs, but her success is intermittent. One result of the attempts is ostracism by her fellow students, both those who use drugs and those who never did. Following an overdose administered by former "friends" who resent her attempts to leave drugs behind, Alice is hospitalized. As the book closes, she finally appears to have her life under control and she decides she no longer needs to keep a diary. But the epilogue tells us that three weeks after Alice's resolve, she is found by her parents--dead of an overdose. Whether the overdose was premeditated or accidental, administered by Alice herself or administered by someone else, are questions that remain unanswered.

Excerpts from GO ASK ALICE, selected by Mark Comstock as offensive follow:

1. ". . . introduced me to torpedos on Friday and Speed on Sunday. . . . like riding shooting stars through the Milky Way, only a million, trillion times better. . . . I felt great, free, abandoned, a different, improved, perfected species. It was wild! It was beautiful!" p. 38.

2. "I don't know why I shouldn't use drugs, because they're wild and they're beautiful and they're wonderful. . . ." p. 40

3. "It was groovy, even greater than the others. I don't see how each trip can be better than the one before, but they are." p. 41

4. "I went to see Dr. Langley this morning and I really laid it on about not being able to sleep. . . . Finally he broke down and gave me the pills. . . . I don't need the sleep as much as I need the escape. . . . I think I can't stand it and then wait for sweet nothingness to take over." p. 47

5. "If only parents would listen! If only they would let us talk instead of forever and eternally and continuously harping and preaching and nagging and correcting and yacking, yacking, yacking!" p. 50

6. "Last night was the night, friend! I finally smoked pot and it was even greater than I expected!" p. 54

7. "Then I turned around and one of the men passed me a joint and that was it. I

wanted to be ripped, smashed, torn up as I had never wanted anything before. This was the scene, these were the swingers and I wanted to be part of it!" p. 71

8. ". . . I saw Sheila and that cocksucker she goes with lighting up and setting out Speed. . . . it wasn't until later I realized that the dirty sonsofbitches had taken turns raping us and treating us sadistically and brutally." p. 73

9. "The rally itself was great, acid and booze and pot as free as the air. . . . This life is beautiful. It's so goddamned beautiful I can hardly stand it." p. 101

10. "I've been the digger here, but now when I face a girl it's like facing a boy. I get all excited and turned on. I want to screw with the girl, . . . Then I get sick and I just want anybody. . . ." p. 101

11. "Another day, another blow job. The fuzz has clamped down till the town is mother dry. If I don't give Big Ass a blow he'll cut off my supply." p. 102

12. "So maybe I am pregnant. So what. There's a pre-med drop-out wandering around somewhere who will take care of it. Or maybe some goddamn prick would stomp on me during a freak-out and I'd lose it anyway. Or maybe the son-of-a-bitch bomb will go off tomorrow. Who knows?" p. 103

13. "Well last night it happened. I am no longer a virgin! . . . I wonder if sex without acid could be so exciting, so wonderful, so indescribable. . . . It took me a long time to get started on the trip . . . then suddenly it happened and I wanted to dance wildly and make love. I hadn't known that I even felt that way about Bill . . . but suddenly I didn't have any inhibitions about trying to seduce him. . . ." p. 42

14. "Her mother was married four times by the time Doris was ten and had humped with who knows how many men in between. And when Doris had just turned eleven her current stepfather started having sex with her but good. . . ." p. 99